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August 11, 2023

VIA ECF

The Honorable Jesse M. Furman
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: *Golden Unicorn Enterprises, Inc. et al. v. Audible, Inc.*,
Case No. 1:21-cv-07059-JMF

Your Honor:

Pursuant to the parties' agreed-upon procedure (*see* ECF No. 282), Audible respectfully seeks leave for Plaintiffs to file sealed and redacted versions of their Supplemental Memorandum of Law in Opposition to Audible's Motion for Summary Judgment (ECF No. 284) ("MSJ Suppl. Opposition").

As discussed in Audible's letter-motion to seal and redact materials from Plaintiffs' Motion for Class Certification (*see* ECF No. 144), although there is a presumption of public access, a court must balance "countervailing factors," including privacy interests as well as confidential and proprietary business information. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *Kewazinga Corp. v. Microsoft Corp.*, No. 1:18-cv-4500 (GHW), 2021 WL 1222122, at *4-6 (S.D.N.Y. Mar. 31, 2021); *Lexington Furniture Indus., Inc. v. Lexington Co.*, AB, No. 19-CV-6239 (PKC), 2021 WL 1143694, at *2 (S.D.N.Y. Mar. 24, 2021).

Here, Audible seeks to redact confidential documents or information that contain sensitive business information, or information that could cause competitive harm. *See* ECF No. 144 (citing cases); *see, e.g., Kewazinga*, 2021 WL 1222122, at *4-6.

Audible seeks narrow redactions of Plaintiffs' MSJ Suppl. Opposition, specifically internal information regarding returns and references to exhibits and deposition testimony about confidential internal business practices. These redactions seek to protect sensitive business information that, if made public, could threaten competitive harm. Audible's proposed redactions on pages 3-4 are the same redactions Audible sought in relation to Plaintiffs' Statement of Undisputed Material Facts, while the proposed redactions on page 7 are likewise similar, *see* ECF Nos. 256, 263.

We are happy to provide any additional information that may be useful to the Court.

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Respectfully,

FENWICK & WEST LLP

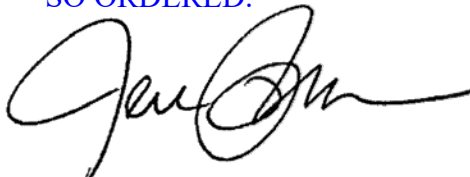
/s/ Brian D. Buckley

Brian D. Buckley

cc: All counsel of record (via ECF)

The motion to seal is granted temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motion. The Clerk of the Court is directed to terminate ECF No. 285.

SO ORDERED.

A handwritten signature in black ink, appearing to read "J. M. Jones", is written over the date "August 14, 2023".

August 14, 2023